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Date: JUNE 3, 2005

To: EXAMINER NGUYEN, THANH T.
U.S. PATENT AND TRADEMARK OFFICE

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Client/Matter No.: AUS920000801US1 (9000/11)

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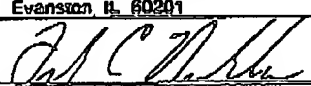
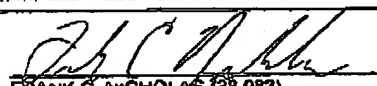
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TRANSMITTAL FORM <i>(to be used for all correspondence after mailing)</i>	Attorney Docket No.	AUS200310001US1 (8000/11)
	Application Number	08/751,624
	Filing Date	DECEMBER 7, 2000
	First Named Inventor	STEVEN M. FRENCH
	Group Art Unit	2144
	Examiner	NGUYEN, THANH T.

ENCLOSURES (check all that apply)		
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Indep.	Minus		0	x \$100=	0	x \$200=	
First Presentation of Multiple Dep. Claim				+ \$180=	—	+ \$360=	
				total add'l fee \$ 0		total add'l fee \$ 0	

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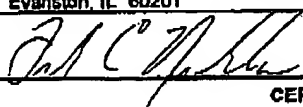
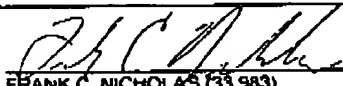
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	Application Number	08/731,524
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	Group Art Unit	2144
	Examiner	NGUYEN, THANH T.

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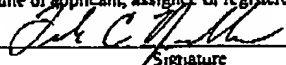
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Name of applicant, assignor or registered representative

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PATENT
Case No.: AUS920000801US1
(9000/11)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re patent application of:)	
)	
STEVEN M. FRENCH, ET AL.)	Examiner: NGUYEN, THANH
)	
Serial No.: 09/731,624)	
)	Group Art Unit: 2144
Filed: DECEMBER 7, 2000)	
Title: METHOD AND SYSTEM FOR)	
GENERATING A LIST OF OPERATING)	
SYSTEMS FOR A TARGET DEVICE)	

APPEAL BRIEF

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Dear Sir:

Appellants herewith respectfully present their Brief on Appeal as follows:

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1. REAL PARTY IN INTEREST

The real party in interest is Assignee INTERNATIONAL BUSINESS MACHINES CORPORATION, by virtue of an assignment executed by the inventors on December 4 and 5, 2000 and filed with the United States Patent and Trademark Office on December 7, 2000, recorded at reel number 011372 frame number 0108.

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2. RELATED APPEALS AND INTERFERENCES

Appellants and the undersigned attorneys are not aware of any appeals or any interferences which will directly affect or be directly affected by or having a bearing on the Board's decision in the pending appeal.

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3. STATUS OF CLAIMS

Claims 1-27 stand rejected as anticipated by Beelitz, et. al., United States Patent No. 6,182,275B1.

Claims 1-27 are the claims on appeal. *See*, Appendix.

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4. STATUS OF AMENDMENTS

Claims 24-27 were added and entered into the application in the response to the May 14, 2004 office action. Claims 1, 12, and 21 were each amended in the same response.

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5. SUMMARY OF CLAIMED SUBJECT MATTER

In this summary of claimed subject matter, all citations are to the specification of United States Patent Application 09/731,624 filed on December 7, 2000. Further, all citations are illustrative only and support for the cited element may be found elsewhere in the specification.

The invention relates to a method of dynamically creating a list of operating systems for a target device in communication with a server, the target device to be remotely booted by the server, prior to executing an operating system on the target device. (p. 3, lines 14-16) The method receives from the server, at the target device, an available operating systems list of at least one operating system available to the target device. (p.3, lines 16-17) The method further determines a hardware configuration of the target device and determines if the hardware configuration is compatible with each operating system from the available operating systems list. (p. 3, lines 17-19) A compatible operating systems list is generated. (p. 3, lines 19-20).

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6. GROUND OF REJECTION TO BE REVIEWED ON APPEAL
Claims 1-27 were rejected under 35 U.S.C. §102(e) under Beelitz.

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7. GROUPING OF CLAIMS

Claims 1-27 should be considered as one group, standing or falling with claim 1.

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8. ARGUMENTS

The Examiner rejected claims 1-27 as anticipated under 35 U.S.C. §102(e) by Beelitz

The §102(e) rejection of claims 1-27 was traversed. In order to maintain this §102(e) rejection, each and every element of the claimed invention must be disclosed in as great detail by the reference. Because the reference does not disclose each and every element, this rejection must fall.

- A. Beelitz does not disclose “receiving from the server, at the target device, an available operating systems list of at least one operating system available to the target device.”**

Claim 1 requires, *inter alia*, “receiving from the server, at the target device, an available operating systems list of at least one operating system available to the target device.” Contrary to the Examiner’s assertions, Beelitz does not disclose such an element. Specifically, Beelitz, at most, discloses “[I]n step 207, control 103 *provides to the user interface 105* a list of the operating system types available.” (emphasis added) at column 7 55-56. Furthermore, “[I]n step 204, *control 103 accesses the master data base 125* to create or generate a list of operating system types available for the targeted computer system” (column 7 lines 35-37).

Control 103 “receives an indication *from a user interface 105* indicating the desire to purchase a computer system.” Column 7, lines 30-32 (emphasis added). Thus, control 103 is distinguished from the targeted computer system 137 (FIG. 1 of Beelitz) and the terminal or user interface 105 (FIG. 1 of Beelitz):

Thus, Beelitz does not disclose “receiving from the server, at the target device, an available operating systems list of at least one operating system available to the target device”, and instead discloses that the “operating systems list” is received at a *user interface 105*.

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Indeed, such a teaching unequivocally teaches away from the instant invention. As previously noted, Beelitz is addressed to a problem facing computer manufacturers – how to install a desired operating system on a target computer that is the subject of a pending sale of the target computer. “A system for specifying, ordering, and building a build-to-order computer system.” Abstract, Beelitz. Therefore, for Beelitz, presenting the “operating systems list” to the *target device* would be pointless, as *the user does not yet have access to the target device*. In contrast, the instant invention, directed at computer networks wherein “the target device [is] to be remotely booted by the server” as noted in the preamble, “receiving from the server, at the target device, an available operating systems list of at least one operating system available to the target device” would solve a problem facing the inventors. Namely, the claimed invention illustrates how to select a preferred operating system for the target device from the compatible operating systems list and execute the preferred operating system on the target device using a remote boot.

The Examiner’s citation to column 16, lines 35-38 (extended selection below) further illustrates the failure of Beelitz to disclose each and every element of claim 24, and further demonstrates that Beelitz teaches away from the claimed invention.

In other embodiments, a user may select other hardware components to be implemented on a targeted computer system. For example, in one embodiment, the user is presented a list of hard drives compatible with the CPU and operating system selected. In other embodiments, the user is presented with a list or lists of compatible peripheral devices. For example, the present invention may also be used by a purchaser to select a compatible type of modem to be installed in the target computer system as well as the type or types of disk drives or CD ROM drives. Other options that could be presented to a user with the present invention include various types of computer chassis, keyboards, and displays. Each hardware component and software program presented to a user would be compatible with the previous selection or selections made by the user. In some embodiments, each type of hardware component would be presented in sub menu or sub-list. Each of the entries for the additional hardware items would include associated tags which indicate compatibility with previous choices.

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In the instant case, the hardware components of the target device are already known (or at least pre-determined) to the user – the user is operating the target device in their presence, and is selecting an operating system to remotely boot the target device.

Because Beelitz fails to disclose “receiving from the server, at the target device, an available operating systems list of at least one operating system available to the target device” this §102(e) rejection must fall.

B. Beelitz does not disclose “a method of dynamically creating a list of operating systems for a target device in communication with a server prior to executing an operating system on the target device”

Beelitz does not disclose “a method of dynamically creating a list of operating systems for a target device in communication with a server prior to executing an operating system on the target device,” as claimed in independent claim 1. Furthermore, Beelitz does not disclose “the target device [is] to be remotely booted by the server.”

Per MPEP §2111.02, the preamble of a claim is to have “the import that the claim as a whole suggests for it. In claim 1, the claim as a whole suggests the limitation that the target is a remotely booted device, and Beelitz does not disclose this element. Beelitz is addressed to a problem facing computer manufacturers – how to install operating systems on computers that are being assembled. Beelitz discloses a method of installing operating systems for target computers that will be separated from the network, shipped to an end user, and then booted. *See, inter alia*, the Abstract of Beelitz, disclosing a “system for specifying, ordering, and building a build-to-order computer system.”

In contrast to the Beelitz disclosure, the instant case addresses problems faced by network administrators with target devices that are remotely booted on a network.

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At most, Beelitz discloses that a targeted computer system 137 is initially booted up to perform the operations and instructions as per associated shell script files to load the selected programs onto its hard drive and to run the tests. In one embodiment, the selected software programs and operating systems can be down loaded and installed on the targeted computer system via the Internet. See, column 15, lines 1-7. Thus, Beelitz does not disclose "the target device to be remotely booted by the server" – Beelitz teaches only loading and installing the operating system onto the targeted computer system to boot the system.

For example, see FIG. 5, and step 520 from Beelitz, column 14, lines 30-55. Beelitz uses a data file to implement the selections per the data file on the targeted computer system. "Thus, the selected operating system, selected software programs, selected patches, selected hard drive operations, the determined always run parts, and other selections are *installed, implemented and tested* by the execution of the associated shell script files. (column 14, lines 37-42)(emphasis added) "The script processing program interprets the instructions of the shell script files and acts upon those instructions *to perform the actual instructions for the installation or implementation of the part on the computer system.*" (column 14, lines 46-50)(emphasis added).

Withdrawal of the rejections to claims 24 and 25-27 depending therefrom is requested.

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SUMMARY

The Appellants respectfully submit that claims 1-27 fully satisfy the requirements of 35 U.S.C. §§102, 103 and 112. In view of the foregoing, favorable consideration and early passage to issue of the present application is respectfully requested.

Dated: June 3, 2005

Respectfully submitted,
STEVEN M. FRENCH, et al.

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10. APPENDIX

1. A method of dynamically creating a list of operating systems for a target device in communication with a server, the target device to be remotely booted by the server, prior to executing an operating system on the target device, comprising:
 - receiving from the server, at the target device, an available operating systems list of at least one operating system available to the target device;
 - determining a hardware configuration of the target device;
 - determining if the hardware configuration is compatible with each operating system from the available operating systems list; and
 - generating a compatible operating systems list.
2. The method of claim 1 wherein the hardware configuration is determined by a network discovery process.
3. The method of claim 1, further comprising:
 - mapping a specific location of the target device.
4. The method of claim 3 further comprising:
 - determining at least one location-based operating system that is based on the specific location of the target device.

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5. The method of claim 4 further comprising:
determining if the hardware configuration is compatible with the
location-based operating system.
6. The method of claim 4 wherein the compatible operating systems list
does not include the location-based operating system, further comprising:
adding the location-based operating system to the compatible operating
systems list.
7. The method of claim 4, wherein the available operating systems list does
not include the location-based operating system, further comprising:
adding the location-based operating system to the available operating
systems list.
8. The method of claim 1, further comprising:
selecting, at the target device, a target operating system from the
compatible operating system list.
9. The method of claim 8 further comprising:
receiving at the target device, the target operating system.
10. The method of claim 9 further comprising:
providing an initial bootstrap to the target device; and
executing the initial bootstrap on the target device before the target
operating system is selected.

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11. The method of claim 10 further comprising:
relocating the initial bootstrap after the target operating system is received.
12. Computer program product in a computer usable medium for dynamically creating a list of operating systems for a target device in communication with a server, the target device to be remotely booted by the server, comprising:
means for receiving at the target device an available operating systems list of at least one operating system available to the target device;
means for determining a hardware configuration of the target device;
means for determining if the hardware configuration is compatible with each operating system from the available operating systems list; and
means for generating a compatible operating systems list.
13. The program of claim 12 further comprising:
means for discovering the hardware configuration via a network discovery process.
14. The program of claim 12 further comprising:
means for determining at least one location-based operating system based on the location of the target device.
15. The program of claim 14 further comprising:
means for adding the location-based operating system to the available operating systems list.

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16. The program of claim 14 further comprising:
means for determining if the hardware configuration is compatible with the location-based operating system.
17. The program of claim 16 further comprising:
means for adding the location-based operating system to the compatible operating systems list if the hardware configuration is compatible with the location-based operating system.
18. The program of claim 12, further comprising:
means for receiving a selection of a target operating system from the compatible operating system list; and
means for sending the target operating system to the target device.
19. The program of claim 18 further comprising:
means for executing a network bootstrap on the target device before the target operating system is selected.
20. The method of claim 19 further comprising:
means for relocating the network bootstrap after the target operating system is selected.

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21. A network data processing system comprising:
- means for sending an available operating systems list from a server to a target device, the target device to be remotely booted by the server, prior to executing an operating system on the target device;
 - means for determining a hardware configuration of the target device;
 - means for determining if the hardware configuration is compatible with each operating system from the available operating systems list; and
 - means for generating a compatible operating systems list.
22. The system of claim 21 further comprising:
- means for determining a specific location of the target device;
 - means for determining at least one location-based operating system that is based on the specific location; and
 - means for determining if the location-based operating system is compatible with the hardware configuration.
23. The system of claim 21 further comprising:
- means for executing a network bootstrap program on the target device before a target operating system is selected;
 - means for selecting the target operating system from the compatible operating systems list;
 - means for relocating the network bootstrap program after the target operating system is selected; and
 - means for sending the target operating system to the target device.

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24. A method of dynamically creating a list of operating systems for a target device in communication with a server, the target device to be remotely booted by the server, prior to executing an operating system on the target device, comprising:

receiving from the server, at the target device, an available operating systems list of at least one operating system available to the target device;
determining a hardware configuration of the target device;
determining if the hardware configuration is compatible with each operating system from the available operating systems list; and generating a compatible operating systems list;

selecting a preferred operating system for the target device from the compatible operating systems list; and

executing the preferred operating system on the target device.

25. The method of claim 24 wherein selecting a preferred operating system for the target device comprises an automatic selection.

26. The method of claim 24 wherein selecting a preferred operating system for the target device comprises a selection by a system administrator.

27. The method of claim 24 wherein selecting a preferred operating system for the target device comprises a selection by a user.

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Evidence Appendix

None

Related Proceedings Appendix

None.